

REMARKS

Restriction Requirement

The Examiner has required restriction in the above-identified application as follows:

Group I: Claims 15-19, drawn to a method of treating a desirable plant; and

Group II: Claims 20-24, drawn to a method of treating an undesirable plant.

The Examiner has also indicated that composition claims 1-7 will be processed with the elected group.

Applicant's Election of Invention

The Applicant elects, with traverse, Group I, claims 1-7 and 15-19 drawn to a method of treating a desirable plant. Applicant specifically reserves the right to file a divisional application directed to non-elected claims 20-24.

The Applicant respectfully traverses this Restriction Requirement on the grounds that both the Group I and Group II claims are directed to the application of a particular class of compounds defined in claims 1-7 to a plant. Although the particular plants are identified in the claims as desirable and undesirable, the Applicants respectfully submit that such designations may be applied somewhat arbitrarily to the same plant, such as clover, in different situations and that the searching associated with these two groups of claims would, therefore, have a substantial overlap.

The Applicant respectfully submits, therefore, that simultaneous examination of the claims of both Group I and Group II would not pose a serious or undue burden on the Examiner. Section 803 of the M.P.E.P. states:

"If the search and examination of an entire application can be made without serious burden, the Examiner must examine on the merits, even though it

includes claims two distinct or independent invention." (emphasis added).

There are two criteria for a proper requirement for restriction. The invention should be independent or distinct, and

"... there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. §803.092, 806.04 A through J, 808.01(a) and 808.02."

Applicant respectfully submits that it would not pose an undue burden on the Examiner to examine the compounds claimed in Groups II.

Species Restriction

Although the Examiner has further indicated that "the species are set forth in claim 1" and indicates that dependent claims 2-7 recite smaller subsets of the species recited in claim 1, the Applicant is unclear as to the manner in which the species may be logically grouped for examination. The Applicant acknowledges the Examiner's request that Applicant elect one species for examination in this application, but respectfully requests, pursuant to MPEP § 809.02, that the Examiner:

(B) Clearly identify each (or in aggravated cases at least exemplary ones) of the disclosed species, to which claims are restricted. The species are preferably identified as the species of figures 1, 2, and 3 or the species of examples I, II, and III, respectively. In the absence of distinct figures or examples to identify the several species, the mechanical means, the particular material, or other distinguishing characteristic of the species should be stated for each species identified. If the species cannot be conveniently identified, the claims may be grouped in accordance with the species to which they are restricted.

Although the Applicant appreciates the Examiner's request, the Applicant respectfully requests the assistance of the Examiner in parsing claim 1 into some reasonable number of species and/or logical groupings of species, *e.g.*, a genus, consistent with the USPTO's manual of classification, that are sufficiently related or share a common functionality so as to permit examination in a single application.


Once such groupings have been identified, the Applicant will be in a position to make a considered and knowing election of species for prosecution in this application. Until such grouping are identified, however, the Applicant respectfully submits that such an election cannot be made.

Applicant respectfully maintains that claim 1 remains generic to all claimed compounds.

For all of the above stated reasons, reconsideration and withdrawal of the pending restriction/election requirement and favorable allowance of all claims in the present application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,
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